

Message Text

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ACTION MC-02

INFO OCT-01 EUR-12 ISO-00 CIAE-00 DODE-00 PM-04 H-02

INR-07 L-03 NSAE-00 NSC-05 PA-02 PRS-01 SP-02 SS-15

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FM AMEMBASSY PARIS

TO SECSTATE WASHDC 3733

INFO AMEMBASSY BONN

AMEMBASSY MADRID

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E.O. 11652: N/A

TAGS: PARM, TSPA, ESA, FR

SUBJECT: SPACE AGENCY ESA PROTESTS USG EXPORT LICENSE
LIMITATION

1.BEGIN SUMMARY. EMBASSY QUOTES IN SECOND PARAGRAPH
THIS MESSAGE AIDE-MEMOIRE FROM EUROPEAN SPACE AGENCY
(ESA) EXPRESSING UNHAPPINESS AT CONDITIONS AND
LIMITATIONS IMPOSED BY OFFICE OF MUNITIONS CONTROL
(OMC) ON EXPORT OF TECHNICAL PROPOSALS FOR AEROSAT
SATELLITE. IT STATES THAT OMC'S POSITION DOES NOT
TAKE INTO ACCOUNT STATUS OF AGENCY IN U.S. ESA MESSAGE
CONTINUES THAT USG EXPORT CONTROL SUPERSEDED BY
MEMORANDUM OF UNDERSTANDING SIGNED BY FAA, ESA, AND
GOVERNMENT OF CANADA AS WELL AS AN ARRANGEMENT TO
ESTABLISH AN AERONAUTICAL SPACE CAPABILITY SIGNED BY
ESA, COMSAT GENERAL CORPORATION, AND CANADA.END SUMMARY.

2. EMBASSY HAS ACKNOWLEDGED ESA COMMUNICATION AND
AWAITS DEPARTMENT INSTRUCTIONS FOR A REPLY.

EUROPEAN SPACE AGENCY
NEUILLY, 29 JULY 1976

AIDE - MEMOIRE

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THE EUROPEAN SPACE AGENCY PRESENTS ITS COMPLIMENTS TO THE UNITED STATES EMBASSY AND HAS THE HONOUR TO SUBMIT TO ITS ATTENTION THE PRESENT AIDE-MEMOIRE EXPRESSING ITS CONCERN AS A RESULT OF THE POSITION TAKEN BY THE OFFICE OF MUNITIONS CONTROL (OMC) OF THE U.S. DEPARTMENT OF STATE AS REGARDS THE TRANSFER OF TECHNOLOGY AND KNOW-HOW IN THE FRAME OF THE AEROSAT PROGRAMME. THE AGENCY FEARS THAT THE POSITION TAKEN BY OMC HAS CREATED AN OBSTACLE TO THE SATISFACTORY EXECUTION OF THE AEROSAT PROGRAMME.

THE OMC HAS ISSUED LICENSES TO THREE AMERICAN FIRMS TO EXPORT TECHNICAL PROPOSALS FOR THE AEROSAT SATELLITE TO THE AEROSAT SPACE SEGMENT PROGRAMME OFFICE (SPO), BUT SUCH LICENSES ARE SUBJECT TO CERTAIN CONDITIONS AND

A. THE LICENSES PERMIT ONLY THE RELEASE OF THE PROPOSALS THEMSELVES; THE AMERICAN FIRMS WERE INFORMED THAT ANY SUBSEQUENT DISCUSSIONS REGARDING THE CONTENT OF THESE PROPOSALS COULD NOT INCLUDE THE TRANSFER OF ANY INFORMATION ON METHODOLOGIES OR ANALYSIS TECHNIQUES.

B. THE ISSUANCE OF LICENSES IN NO WAY COMMITS THE U. S. DEPARTMENT OF STATE TO ACT FAVOURABLY ON ANY FOLLOW-ON REQUESTS FOR ADDITIONAL TECHNOLOGY RELATED TO THE IMPLEMENTATION OF WHAT IS BEING PROPOSED.

C. IT IS UNDERLINED THAT CURRENT U. S. NATIONAL POLICY IS TO ENCOURAGE THE SALE OF SPACE HARDWARE AND RELATED SERVICES WHERE POSSIBLE AND TO AVOID THE TRANSFER OF THE TECHNOLOGY AND KNOW-HOW INCIDENT TO THE PRODUCTION OF SUCH HARDWARE AND SERVICES.

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D. FURTHER, ACCEPTANCE OF ANY PROVISION IN THE REQUEST FOR PROPOSAL WHICH COMMITS A FIRM TO TRANSFER U. S. PRODUCTION KNOW-HOW EITHER ORALLY, VISUALLY OR THROUGH DOCUMENTARY MEANS, WOULD NOT BE CONSISTENT WITH CURRENT U. S. NATIONAL POLICY.

E. FINALLY, IT IS NOTED THAT THE DECISION TO AUTHORISE THE RELEASE OF THE FINAL PROPOSAL WITHOUT FIRST REVIEWING IT REPRESENTS AN EXCEPTION TO ESTABLISHED PRACTISE.

THE AGENCY WOULD LIKE TO EXPRESS THE OPINION THAT THE POSITION TAKEN BY THE OFFICE OF MUNITIONS CONTROL DOES NOT TAKE INTO ACCOUNT THE STATUS OF THE AGENCY IN THE UNITED STATES AND THE SPECIAL SITUATION OF THE AEROSAT PROGRAMME. THE FOLLOWING CONSIDERATIONS SHOULD BE TAKEN INTO ACCOUNT:

1. THE AGENCY ENJOYS PROCEDURAL FACILITIES AS REGARDS THE EXPORT OF GOODS ACQUIRED FROM U. S. PRIVATE FIRMS ON THE BASIS OF A PROCEDURE ADOPTED BY THE
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STATE DEPARTMENT. (PLEASE REFER TO THE TELEX DATED 19 JANUARY 1967 ADDRESSED TO THE UNITED STATES EMBASSY IN PARIS BY MR RUSK, SECRETARY OF STATE). FURTHERMORE, IN THE SAME CONTEXT, THE PRESIDENTIAL EXECUTIVE ORDER N. 11760 DATED 17 JANUARY 1974 HAS EXTENDED TO THE AGENCY THE APPLICATION OF THE INTERNATIONAL ORGANISATIONS IMMUNITIES ACT (PUBLIC LAW 291 - 79TH CONGRESS) AND IT IS THE AGENCY'S UNDERSTANDING THAT ITS ACTIVITIES, IN THE COURSE OF THE EXECUTION OF THE AEROSAT PROGRAMME, ARE COVERED BY THE EXISTING

ARRANGEMENTS BETWEEN THE UNITED STATES AND THE AGENCY.

2. THE AEROSAT PROGRAMME IS AN INTERNATIONAL PROGRAMME IN WHICH THE AGENCY IS TAKING PART IN COOPERATION WITH THE UNITED STATES AND CANADA, IN ACCORDANCE WITH TWO INTERNATIONAL AGREEMENTS: FIRSTLY, THE MEMORANDUM OF UNDERSTANDING SIGNED BY THE FEDERAL AVIATION ADMINISTRATION, THE AGENCY AND THE GOVERNMENT OF CANADA, AND SECONDLY, AN ARRANGEMENT TO ESTABLISH AN AERONAUTICAL SPACE SEGMENT CAPABILITY, SIGNED BY THE AGENCY, COMSAT GENERAL CORPORATION AND CANADA.

IN ACCORDANCE WITH THE LATTER ARRANGEMENT, THE SPO HAS BEEN ORGANISED BY THE THREE SIGNATORIES. THE SPO IS RESPONSIBLE UNDER THE GUIDANCE AND CONTROL OF THE SPACE SEGMENT BOARD (SB) REPRESENTING THE THREE SIGNATORIES FOR THE PREPARATION AND PUBLICATION OF THE REQUEST FOR PROPOSAL, FOR THE ANALYSIS OF THE BIDS RECEIVED, FOR A RECOMMENDATION OF A CONTRACT AWARD AND FOR NEGOTIATION AND ADMINISTRATION OF THE CONTRACT. IN ORDER TO FULFILL ITS RESPONSIBILITIES, THE SPO WILL HAVE TO OBTAIN SUFFICIENT TECHNICAL INFORMATION FROM THE BIDDERS TO EVALUATE THEIR ABILITIES TO PERFORM AND MUST OBTAIN TECHNICAL INFORMATION FROM THE SELECTED CONTRACTOR AND HAVE ACCESS TO THE WORK FACILITIES FOR THE PURPOSE OF MONITORING PERFORMANCE.

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3. THE ARRANGEMENT SPECIFIES THAT THE GEOGRAPHICAL DISTRIBUTION OF WORK CONTRACTED OUT SHALL BE APPORTIONED TO INDUSTRY IN THE PARTIES' COUNTRIES TO THE TOTAL PROGRAMME COSTS. SUCH REQUIREMENT WILL LIKELY RESULT IN U. S. PRIME CONTRACTOR'S ARRANGING WITH EUROPEAN AND CANADIAN SUBCONTRACTORS TO PERFORM FABRICATION AND INTEGRATION ACTIVITIES IN EUROPE AND CANADA IN ACCORDANCE WITH DESIGNS AND DRAWINGS PROVIDED BY THE U. S. PRIME CONTRACTORS.
4. IT HAS BEEN STIPULATED IN THE ABOVE-MENTIONED ARRANGEMENT THAT THE CONTRACTING PROCEDURES SHALL BE CONSISTENT WITH THE APPLICABLE RULES AND REGULATIONS OF THE AGENCY AND WITH THE LAWS OF THE UNITED STATES AND OF CANADA, TO THE EXTENT THAT THEY ARE APPLICABLE.

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EXCEPT AS THE SB MAY OTHERWISE DECIDE, ALL
CONTRACTS AND SUB-CONTRACTS WHICH INVOLVE AN
ELEMENT OF EXPERIMENT, RESEARCH OR DEVELOPMENT
SHALL SECURE FOR EACH PARTY TO THE ARRANGEMENT
THE RIGHT TO HAVE ACCESS TO ALL INVENTIONS AND
TECHNICAL DATA GENERATED BY OR RESULTING FROM
WORK PERFORMED PURSUANT TO SUCH CONTRACTS, AS
WELL AS THE RIGHT, ON FAIR AND REASONABLE TERMS,
OF DISCLOSURE AND USE OF ALL BACKGROUND INVENTIONS
AND TECHNICAL DATA DIRECTLY UTILISED IN THE
EXECUTION OF WORK PERFORMED PURSUANT TO SUCH
CONTRACTS. ALL INVENTIONS AND TECHNICAL DATA
ACQUIRED, INCLUDING THE RIGHTS THEREIN, SHALL BE
MADE AVAILABLE FOR THE SPACE SEGMENT PROGRAMME.

IT IS THE AGENCY'S VIEW THAT BY PARTICIPATING IN THE
AEROSAT PROGRAMME, THE UNITED STATES GOVERNMENT HAS
ACCEPTED THAT THE U. S. POLICY RULES CONCERNING THE
AVOIDANCE OF TRANSFER OF TECHNOLOGY WILL BE
SUPERSEDED BY THE TERMS OF THE INTERNATIONAL

ARRANGEMENTS ESTABLISHED BY THE THREE SIGNATORIES.
IN PARTICULAR, PARTICIPATION IN THE PROGRAMME
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INDICATES THAT SUFFICIENT TECHNICAL INFORMATION WILL
BE AVAILABLE TO THE SPO FOR THE PERFORMANCE OF ITS
RESPONSIBILITIES, THAT DESIGNS AND DRAWINGS MAY BE
TRANSFERRED FROM U. S. INDUSTRY TO EUROPEAN AND
CANADIAN FIRMS, AND THAT ACCESS TO INVENTIONS AND
TECHNICAL DATA DEVELOPED DURING THE PROGRAMME, AS
WELL AS BACKGROUND INVENTIONS AND TECHNICAL DATA,
SHALL BE SECURED FOR THE PARTIES AND THE
SPO.

THE AGENCY FEARS THAT IF THE POSITION TAKEN BY THE
OFFICE OF MUNITIONS CONTROL IS MAINTAINED, THIS WILL
NOT PERMIT THE SPO TO EXECUTE ITS TASKS TO THE
SATISFACTION OF THE SIGNATORIES AND IN ACCORDANCE WITH
THE PROVISIONS OF SUCH ARRANGEMENTS.

IN CONCLUSION, THE AGENCY WOULD BE MOST GRATEFUL IF
THE UNITED STATES EMBASSY WOULD BE GOOD ENOUGH TO
SUBMIT TO THE U. S. AUTHORITIES CONCERNED ITS SUGGES-
TION FOR POSITIVE REACTIONS TO REQUESTS FOR PROPOSALS
ISSUED BY THE SPO, AND FOR THE FACILITATION, BY
MEANS OF A SIMPLIFIED PROCEDURE, OF THE IMPLEMENTATION
OF THE PROVISIONS OF THE INTERNATIONAL ARRANGEMENTS
IN QUESTION.

THE EUROPEAN SPACE AGENCY TAKES THIS OPPORTUNITY TO
RENEW TO THE UNITED STATES EMBASSY THE ASSURANCE OF
ITS HIGHEST CONSIDERATION.
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